IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TECHRADIUM, INC.,	§
	§
Plaintiff	§
	§
vs.	§ **NO. 4:09-cv-02490**
	§
TWITTER, INC.,	§
	§
Defendant.	§

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to P.R. 4–3 and the Court's February 8, 2010 Order, plaintiff/counterdefendant

TechRadium, Inc. ("TechRadium") and defendant/counterclaimant Twitter, Inc. ("Twitter")

submit the following Joint Claim Construction and Prehearing Statement.

I.   CONSTRUCTION OF TERMS UPON WHICH THE PARTIES AGREE

	Claim Term	Claims in Which Term Appears	Agreed Construction & Identified Support
1	administrator interface	'389 Patent 1, 7 '183 Patent 1, 2, 7, 8, 15, 16, 25, 29, 34, 36, 37 '165 Patent 1, 6, 13, 14, 24, 28, 29, 34, 36, 37	A point of interaction that allows an administrator to prepare, address, and transmit a message to numerous recipients.
2	transmitting/ transmits/ transmitted	'389 Patent 1, 2, 3, 13 '183 Patent 1, 2, 8, 16, 23, 27, 29-31, 33-	sending/sends/sent

	Claim Term	Claims in Which Term Appears	Agreed Construction & Identified Support
		37 '165 Patent 1, 14, 21, 28-31, 33-37	
3	message	'389 Patent 1-4, 6, 9, 11, 13, 17 '183 Patent 1, 2, 5, 8, 10, 13, 14, 16, 22, 24, 26-30, 33-37 '165 Patent 1, 14, 21, 28-31, 34-37	A digital or analog text communication, numerical communication, voice communication, one or more images, or any combination of these.
4	dynamic information database	'389 Patent 1, 5, 11, 12, 13 '183 Patent 1, 10, 12, 15-19, 32, 33 '165 Patent 1, 8, 10, 13-17, 32, 33	An organized collection of information in computer memory, the elements of which can be easily changed.
5	user contact data	'389 Patent 1, 2, 14 '183 Patent 1, 11, 13, 25, 27, 30 '165 Patent 1, 9, 11, 24, 26, 30	Information identifying a unique means to contact a user.
6	user selected	'389 Patent 1, 2, 3 '183 Patent 1, 24	Chosen by the sender or receiver of a message.

	Claim Term	Claims in Which Term Appears	Agreed Construction & Identified Support
		'165 Patent 1, 22	
7	priority information	'389 Patent 1 '183 Patent 1 '165 Patent 1	Information specifying the order in which the system is required to transmit messages to user contact devices.
8	group associated with each user contact device	'389 Patent 1 '183 Patent 1 '165 Patent 1	The group to which each user contact device is assigned.
9	user selected language	'389 Patent 2, 3 '183 Patent 24 '165 Patent 22	A natural language, such as English or Spanish, chosen by the user.
10	translating the message	'389 Patent 2, 3, 4	Converting a message from one natural language to another natural language.
11	predefined group	'389 Patent 13	A group of message recipients created by the administrator or user prior to sending the message.
12	all users in the at least one group	'183 Patent 1 '165 Patent 1	All the users in a single group or a set of multiple groups.
13	response	'389 Patent 1	Same as "response data".

	Claim Term	Claims in Which Term Appears	Agreed Construction & Identified Support
		'183 Patent 2, 3, 32

'165 Patent 1, 2, 32 | |
| 14 | response data | '389 Patent 1 | Automatically-generated data indicating whether an individual user contact device has received a message.

"The response data (22) in the dynamic information database (12) is directed towards information based upon whether the user contact device and, in turn, the user, received the message. The response data (22) includes user response information (23) that indicates whether the user (17) has received the message (6). The user response information (23) is gathered by the dynamic information database (12). The response data (22) further includes 'error-in-response' information (24) that indicates the user contact data (14) is insufficient and can not be delivered properly. The error in response information (24) can also indicate that an email address or phone number is simply invalid." 5:11-22.

"Applicant's Application obtains a digital signal back after sending out the message (Applicant's Application Claim 1) without the user having to press a button or otherwise communicate with the sender . . . that indicates individual user contact devices have received the message . . . automatically detects when calls are connected." April 20, 2006 Amendment and Response at 10-11 |
| 15 | user response information | '389 Patent 1 | An automatically-generated indication of whether a user contact device has received a message.

"Applicant's Application obtains a digital signal back after sending out the message (Applicant's Application Claim 1) without the |

	Claim Term	Claims in Which Term Appears	Agreed Construction & Identified Support
			user having to press a button or otherwise communicate with the sender . . . that indicates individual user contact devices have received the message . . . automatically detects when calls are connected." April 20, 2006 Amendment and Response at 10-11
16	at least one user contact device transmits a response	'389 Patent 1	One or more user contact devices automatically, without any action by the user, transmits a response message. "Applicant's Application obtains a digital signal back after sending out the message (Applicant's Application Claim 1) without the user having to press a button or otherwise communicate with the sender . . . that indicates individual user contact devices have received the message . . . automatically detects when calls are connected." April 20, 2006 Amendment and Response at 10-11. *See also*, 5:11-22; 5:52-57.
17	replay response	'183 Patent 36 '165 Patent 36	An indication from a user device to retransmit a message.

II.   DISPUTED TERMS, PROPOSED CONSTRUCTIONS, AND EVIDENCE

	Claim Term	Claims	Twitter's Proposed Construction and Identification of Support	TechRadium's Proposed Construction and Identification of Support
1	user contact device information	'389 Patent 1 '183 Patent 3 '165 Patent 1, 2	Information uniquely identifying one or more addresses and/or numbers for a user's contact devices. "The user contact information (15) includes information concerning	Anything that identifies a user contact device. A user contact device includes a cell phone, a television, a LED display, a land phone line, an email address, a fax machine, a pager, a digital display, similar devices, and handheld wireless device

	Claim Term	Claims	Twitter's Proposed Construction and Identification of Support	TechRadium's Proposed Construction and Identification of Support
			both the user contact device and the user. The user contact information (15) can include an email address, an internet protocol (IP) address, a phone number, and combinations thereof. The user contact information (15) can further include the user's name, the user's address, the user's phone number, the user's device address . . . ." 4:24-36.	including PDAs and Blackberries. Column 4, Lines 24 - 36.
2	grouping information	'389 Patent 1, 13 '183 Patent 1 '165 Patent 1	Information identifying a user contact device as a member of a group of user contact devices to which the administrator can send a message. "The grouping information (19) in the dynamic information database (12) is used to group users together into separable and identifiable groups for ease of contact by the administrator. The grouping information (19) can include one or more groups (20) associated with the user contact data (14)." 4:46-55. "Examples of groupings include parents of a second grade class, an alumni class from a specific year . . . ." 4:59-64.	"grouping information" – Information used to group users together into identifiable groups for ease of contact by the administrator. The grouping information can include one or more groups associated with the user contact data. Column 4, Lines 46-55.
3	priority order	'389 Patent 1, 16, 17	The order in which the administrator interface is required to transmit the	The order in which the messaging system contacts the individual contact

	Claim Term	Claims	Twitter's Proposed Construction and Identification of Support	TechRadium's Proposed Construction and Identification of Support
4			message to a first subgroup of user contact devices within a particular group. "The grouping information (19) further includes a priority order for contacting a user within the group (20). The priority order directs the administrator interface (4) as to the order in which the interface should contact the individual contact devices with the message. The priority order provides the benefit of ensuring that the most critical users receive the message first in case time is not available to contact all other users." 4:66-5:6. Defendants also reserve the right to offer expert testimony concerning technical background and the understanding one of ordinary skill in the art would have had of this limitation at the time of filing.	devices with the message. 4:67-5:3
4	response information	'389 Patent 1	An automatically-generated indication that the address or number for a user contact device is insufficient or invalid. "The response data (22) further includes 'error-in-response' information (24) that indicates the user	See "user response information".

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	Claim Term	Claims	Twitter's Proposed Construction and Identification of Support	TechRadium's Proposed Construction and Identification of Support
			contact data (14) is insufficient and can not be delivered properly. The error in response information (24) can also indicate that an email address or phone number is simply invalid." 5:18-22.	
5	at least two industry standard gateways	'183 Patent 1 '165 Patent 1	Two or more devices that connect networks using different communication protocols that translate communications from one protocol to another. Defendants also reserve the right to offer expert testimony concerning technical background and the understanding one of ordinary skill in the art would have had of this limitation at the time of filing.	Same as No. 6 below.
6	at least two industry standard gateways . . . selected from the group consisting of: a SMTP gateway[, sic] a SIP, an H.323, an ISDN gateway, a PSTN gateway, a softswitch, and combinations thereof	'389 Patent 1	Two or more devices that connect networks using different communication protocols each of which translates communications from one protocol to the SMTP, SIP, H.323, ISDN, PSTN, or softswitch protocol. "by transmitting the message (6) through numerous gateways, the system provides redundancy in order to ensure that message is relayed to the users." 5:35-41. Inventors specifically limited the '389 claims to an explicit list to get around	Two or more network connections using different communication protocols. 5:35-41

	Claim Term	Claims	Twitter's Proposed Construction and Identification of Support	TechRadium's Proposed Construction and Identification of Support
			the Nelson reference during prosecution. '389 File History, November 4, 2005 Office Action at 7-8; April 20, 2006 Amendment and Response at 2-3. Defendants also reserve the right to offer expert testimony concerning technical background and the understanding one of ordinary skill in the art would have had of this limitation at the time of filing.	
7	transmitted . . . simultaneously	'389 Patent 1 '183 Patent 1 '165 Patent 1	sent . . . at the same instant of time. "sent simultaneously, or in a notification hierarchy" 1:37-39. "simultaneous (1) Pertaining to the occurrence of two or more events at the same instant of time. (A) (2) In a process, pertaining to two or more events that occur within the same interval of time, each one handled by a separate functional unit . . . ." IBM Dictionary of Computing at 626 (1994). Defendants also reserve the right to offer expert testimony concerning technical background and the understanding one of ordinary skill in the art would have had of this	In a process, pertaining to two or more events that occur within the same interval of time, each one handled by a separate functional unit . . . . IBM Dictionary of Computing at 626 (1994).

	Claim Term	Claims	Twitter's Proposed Construction and Identification of Support	TechRadium's Proposed Construction and Identification of Support
			limitation at the time of filing.	
8	reporting information	'389 Patent 5, 6 '183 Patent 4, 5 '165 Patent 4, 5	Information regarding a message sent or users receiving them. "the system can include reporting information in order to generate reports based upon information in the dynamic information database (12). The reports can be generated by the administrator, the user, a group, or combinations thereof. The reports can include a date the message was sent, a time the message was sent, a date the message was received, a time the message was received, content of the message, a recipient of the message, recipient information related to the recipient of the message, and combinations thereof. Other examples include the name of the person who received the message, a copy of the voice mail, a time when an e-mail was accessed, the time when a fax is printed and so on. The administrator can create custom designed reports, or standard reports can be generated from the dynamic information database for use by the administrator." 5:60-6:6	Information in the dynamic information database for generating reports. Column 5, Lines 52-60.
9	initiate transmission	'183 Patent	Send the message to all user	An administrator initiates transmission of the message

	Claim Term	Claims	Twitter's Proposed Construction and Identification of Support	TechRadium's Proposed Construction and Identification of Support
	of the at least one message simultaneously to a first group of users contact devices . . . then simultaneously to a second group of user contact devices	1 '165 Patent 1	contact devices in a first predefined group of devices at a first instant in time, then send the same message to all user contact devices in a second predefined group of devices at a subsequent instant in time. 11:66-12:3. Defendants also reserve the right to offer expert testimony concerning technical background and the understanding one of ordinary skill in the art would have had of this limitation at the time of filing.	simultaneously to a first group of user contact devices, then simultaneously to a second group of user contact devices using the user selected priority information. Col. 11, L 66 – Col. 12, L 3
	using the administrator interface to ensure each user . . . is contacted on the first group of user contact devices before the second group of user contact devices	'183 Patent 1 '165 Patent 1	Receiving a response in the administrator interface indicating that all users in one predefined group has received a message on a predefined contact device prior to sending the message to one or more contact devices in a second predefined group. "Each user contact device can transmit a response upon receiving a message, which can be an audio tone file, a visual response, or a textual response. By tracking both responses and the transmission of the message, the administrator interface can ensure that the first group of user contact	The administrator interface is then used to ensure each user is contacted on the first group of user contact devices before the second group of user contact devices using the user selected priority information. Col. 12, L 3-6

	Claim Term	Claims	Twitter's Proposed Construction and Identification of Support	TechRadium's Proposed Construction and Identification of Support
			devices is contacted before the second group, using the user selected priority information." '183 Patent at 7:49-53.	
10	receiving responses from the user contact devices through at least two industry standard gateways simultaneously	'165 Patent 1	receiving at the same instant in time from each of multiple contact devices at least two responses through two or more network connections using different communication protocols Defendants reserve the right to offer expert testimony concerning technical background and the understanding one of ordinary skill in the art would have had of this limitation at the time of filing.	Receiving responses from the user contact devices through the two or more industry standard gateways simultaneously and storing the responses in the dynamic information database. Col. 4, L 64 - 67
11	prerecorded	'183 Patent 10 '165 Patent 8	Recorded prior to the event causing the message to be sent.	A message recorded in advance and stored in the database to be sent when selected.

III.   ANTICIPATED TIME NECESSARY FOR THE CLAIM CONSTRUCTION HEARING

The parties anticipate that they will need four hours for the joint claim construction and

summary judgment hearing.

IV.   IDENTIFICATION OF WITNESSES FOR CLAIM CONSTRUCTION HEARING

Twitter proposes to call Dr. Mark Jones, a professor at Virginia Tech to testify on the

proper construction of the terms of the patents-in-suit and the knowledge of one of ordinary skill

in the art at the time of filing.

TechRadium proposes calling Gavin Clarkson to testify on the proper construction of the terms of the patents-in-suit and the knowledge of one of ordinary skill in the art at the time of filing.

V.   OTHER ISSUES FOR PREHEARING CONFERENCE

Twitter believes that the Court's current briefing and hearing schedule will be adequate for resolution of the claim construction and summary judgment matters.

Dated: May 7, 2010

Respectfully submitted,

/s/ *W. Shawn Staples*

/s/ *Phillip J. Haack*

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ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2010, I directed that the foregoing document be electronically filed with the Clerk of the Court by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Respectfully submitted,

/s/ *Phillip J. Haack*
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